

Sonia Sotomayor, *Foreword to Daniel Terris et al., THE INTERNATIONAL JUDGE (2007).*

A proposed bill in Congress to prohibit the citation of foreign law in federal judicial decisions gave rise in recent years to a heated and extensive dialogue among American judges, academics, and commentators on the appropriate role that foreign and international law should play in American constitutional adjudication. But the question of how much we have to learn from foreign law and the international community when interpreting our Constitution is not the only one worth posing. As *The International Judge* makes clear, we should also question how much we have to learn from international courts and from their male and female judges about the process of judging and the factors outside of the law that influence our decisions. This book makes an invaluable contribution to the efforts to answer that question by laying bare the institutional, political, moral, ethical, and legal concerns that animate the work of international courts and their judges.

Daniel Terris, Cesare P. R. Romano, and Leigh Swigart deftly identify the many challenges confronting international judges that national judges do not face. The authors, however, also identify the many ways in which international judges address and confront the same issues that my colleagues and I do on the United States Courts of Appeals. Like Judge Cecilia Medina Quiroga of the Inter-American Court of Human Rights, all judges have cases that touch our passions deeply, but we all struggle constantly with remaining impartial and “let[ting] reason speak.” Like Judge Navenethem Pillay of the International Criminal Tribunal for Rwanda, all judges believe that “the test of our accomplishment is in the jurisprudence produced.” But we are also acutely aware of the other dimensions of our roles as judges and, like Judge Pillay, we struggle to find ways to convince colleagues of our views and to accommodate the needs—and respect the powers—of the other branches of government.

Terris, Romano, and Swigart describe international courts as bold, cacophonous places where the halls resonate with a chorus of disparate voices, all oriented towards the common goal of pronouncing justice. While my colleagues on American courts of appeals rarely confront linguistic challenges among ourselves, we certainly speak to each other in different idioms. On my court, former prosecutors, district court judges, commercial lawyers in private practice, elected politicians, and academics dispute and reach consensus on a wildly divergent array of cases and controversies. *The International Judge* reveals the extent to which all courts, no matter what their provenance or jurisdiction, are in large part the product of their membership and their judges' ability to think through and across their own intellectual and professional backgrounds, to reach some juncture of consensus and cooperation in which a common language is used to articulate the rules and norms that bind their communities. In the end, despite our different legal cultures—civil- or common-law-based, as discussed by the authors—we are all trying to achieve justice.

Perhaps the most important contribution this book makes is its unique view of the dynamics of institution-building in the singular context of young international courts. Rare is the opportunity to view such important institutions in their parturition, and to hear the voices of their founding mothers and fathers, who have and will shape the paths of those institutions. International tribunals are of relatively recent vintage, at least in comparison to the formal legal systems of many countries. But there are other young legal systems throughout the world where pioneering judges—like those of the international courts—are trying to cultivate the rule of law in the wake of revolutions and other political upheavals. This book provides a nuanced roadmap for those judges, as well as judges from established legal systems, as we all attempt to cobble together a culture of justice-seeking in a changed world.

All this talk about the utility of this book for American judges and academics is not meant to suggest that it is anything less than important reading for those whose concerns lay elsewhere from American law and judicial politics. Rather, it merely reflects my particular point of view as a federal appellate judge. This book stands strongly on its own terms as an illuminating discussion of the politics and pragmatics of developing an international rule of law and of institution building, and offers some captivating portraits of the pioneers who work tirelessly to bring these institutions from their incipience to their maturity.

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